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CORNING, NY 14831

EXAMINER	
LAZORCIK, JASON L	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/696,054	FREDHOLM, ALLAN M.	
	Examiner	Art Unit	
	JASON L. LAZORCIK	1791	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12/04/2008 and 10/27/2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,6-10 and 12-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-2, 6-10, 12-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *01/19/2009*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 24, 2008 and the Supplemental Amendment dated December 4, 2008 have been entered and considered.

Status of the Claims

Applicants Supplemental Amendment dated December 4, 2008 amends independent claim 1, all other claims stand as previously presented in Applicants reply dated January 22, 2008.

Claims 3-5, 11, and 21-37 have been previously cancelled by the Applicant

Claims 1-2, 6-10, 12-20 are pending for prosecution on the merits.

Claim Objections

2. **Claim 10 is objected to because of the following informalities**: Claim 10 depends from cancelled claim 3. Since the instant claim depends from a cancelled parent claim, the scope of the instant claim can not be ascertained thereby precluding

an examination of the claim. For at least the foregoing reason, the instant claim is not further treated on the merits. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. **Claims 1-2, 6-10, 12-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.** The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

5. Claim 1 recites the limitation of “fusion forming a stream of glass" in line 4. With respect to the instant limitation, the Specification as originally filed makes reference to the "Fusion Draw" method (see paragraph [0008]) and repeatedly recites a step of "delivering a stream of glass" (see for example paragraphs [0016], [0034], and [0044]). The original Specification however never explicitly discloses the currently recited “fusion forming" process and it is not evident that the latter term is commensurate in scope to the former disclosed processes. Specifically, the recited “fusion forming” process may reasonably be construed to encompass a broader range of glass forming processes than those disclosed in the instant application. It is therefore the Examiners

assessment that although the originally files Specification provides reasonable basis for a “fusion draw” method of forming a glass stream and for a general step of delivering a stream of glass, the Specification does not provide support for the instant limitation as presently set forth.

6. Claim 1, lines 12-13 recites the limitation of a “substantially smooth” surface of a treatment device or mechanism. With respect to this “treatment means”, the Specification provides no explicit or inherent limitation with respect to the surface condition, and it is therefore the Examiners assessment that the instant limitation lacks supporting basis in the Specification as originally filed.

7. Claim 1, lines 23-24 recite the limitation wherein the outer edges of the treated glass stream are contacted "with a device or mechanism that controls the speed, and adjusts the width or thickness of the treated stream of glass". Applicants Specification as originally filed merely states that the mechanism is used "in conventional manner to control (the glass) travel speed and also to control its width and its thickness" (see for example ¶[0060]). Exercising "control” over the glass width and thickness is not equivalent to the step of "adjusting" the width and thickness since the glass sheet dimensions may be under control without necessarily changing or being adjusted. That is, the act of controlling is not equivalent to the act of adjusting. It is therefore the Examiners assessment that the instant limitation lacks supporting basis in the Specification as originally filed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

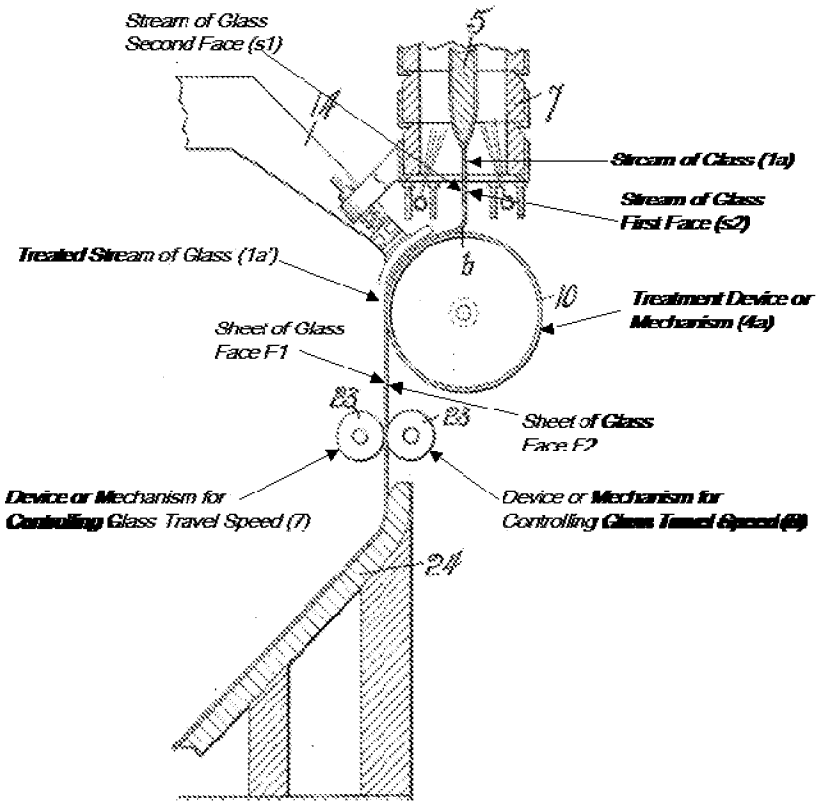
The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-2, 6-8, 9/1, 9/8, 12, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Danner (1,674,856) in view of Simon et al (US 3,537,834)

.

The particular elements of Danner that apply to the instant claims are set forth with particular reference to the composite excerpt from Danner Figures 4 and 5 as presented below and as labeled in accord with the applicants terminology.



Specifically with respect to **Claim 1**, Danner teaches a method of producing sheets of glass wherein;

1. The sheet of glass has two faces, face (F1) and face (F2) wherein one side of said sheet (F1) presents a “hardened skin surface which will prevent it becoming marred”. In the context of the present claim this glass sheet presenting an unmarred, “hardened surface skin” is held equivalent to a sheet of glass with at least one of said faces presenting “a high surface quality”
2. A stream of glass (1a) which has a first face (s2) and a second face (s1), is “fusion formed" with each face being free from making contact with any

surface as evidenced in the region of the s1 and s2 lead lines by the above figure.

3. The fusion formed stream is stably delivered to a treatment device or mechanism (4a). Danner places no definitive limitation upon the surface topography of the "treatment device or mechanism" other than indicating that the sheet of glass in a softened state "has contact at one side thereof with the figured surface of a roll or other impression member". In the absence of any evidence to the contrary, it is the Examiners position that the prior art device reads equally well upon treatment devices which are substantially textured or as well as devices which are substantially smooth. Further as evidenced from the instant reference figures 1, 4, and 5, the exterior surface of the impression roll (10), lacking any discernable surface features, clearly teaches that the impression roll may present a "substantially smooth surface" to the softened glass sheet.
4. The first face (s2) of the stream of glass in placed into contact with a treatment device or mechanism (4a) while maintaining at least a central strip of the second face (s1) of the stream of glass (1a) free from any contact with any surface. The immediate reference indicates (pg 2, Line 53-54) that the sheet is deflected by the roll or "treatment device or mechanism (4a)" and passes around and down one side thereof which is understood as equivalent to the claimed process of supporting the weight of said glass and accompanying the falling movement of said glass.

Further, while the glass is in contact with the “treatment device or mechanism (4a)” the second face (s1) of the glass sheet (1a) is cooled by an air blast nozzle. Since the inverse relationship between glass temperature and viscosity is well established and the “treatment device or mechanism (4a)” cooperates in the cooling of the glass sheet”, said device increases the viscosity of the glass sheet. The “treatment device or mechanism (4a)” is therefore understood to both accompany “the falling of said glass while increasing glass viscosity” as claimed.

5. A device or mechanism for controlling glass travel speed, width, and thickness (7,8) is placed into contact with the outer edges of the treated stream (1a’) (pg 3, Lines7-8). Applicant here is advised that the instant limitation requires only a step of contacting the outer edges with a device "that control the speed, and adjusts the width or thickness of the treated stream of glass". The limitation however does not require that the glass sheet is actually controlled or adjusted by the device.
6. The glass sheet is thereafter conveyed into a leer or annealing chamber which is understood to effect the “cooling of said sheet of glass” as claimed (pg 2, line 55)

With respect to **Claim 8**, the immediate reference indicates (pg 2, lines 122-125) that the roll 10 or “treatment device or mechanism (4a)” “may be driven in any suitable or convenient manner at a peripheral speed conforming to the speed of flow of the sheet b from the slab”. As discussed in the rejection of Claim 1 above, the surface of

the "treatment device or mechanism (4a)" is understood to present a "substantially smooth surface to the received stream of glass. It is therefore understood from the above figure that

1. The delivered stream of glass (1a) is received on the surface of a "treatment device or mechanism (4a)" as indicated in parent claims or a "roller (4a)" as indicated in the immediate claim.
2. The surface of said "roller (4a)" presents a surface temperature which is understood to be "suitable" for the desired process
3. The "roller (4a)" is driven or "rotated" as claimed at a suitable speed to accompany the movement of said stream or as indicated above at a speed conforming to the speed of flow of the sheet from the slab.
4. From the figure, it is evidenced that there exists no relative displacement of the stream (1a) relative to the surface of the "roller (4a)" and that contact between the stream and the roller is maintained over a "significant" fraction of the circumference of said "roller (4a)"
5. The roller is associated with a "Device or mechanism for controlling the surface temperature of the glass sheet" which in the above figure is understood as equivalent to the air-blast nozzle (14) as set forth by Danner (pg 2, lines 66-73). Further, Danner indicates (pg2, Lines82)that "the air blast…tends to quickly cool the outer side of the sheet and give it a glazed formation so that it will not be marred by coming into contact with

a deflecting agent" which is understood in the present claim as cooling the glass sufficiently to obtain the desired increase in viscosity.

With respect to **Claims 9/1 and 9/8** and with reference to the appropriate parent claim rejection, Danner indicates (pg 2, Lines 102-103) that "the sheet would be quite soft at its point of contact with the impression mold" or at the point that the sheet comes into contact with the roller (4a). Danner further indicates (pg 2, Lines 91-96) that after treatment on the roller (4a) the sheet has an "outer chilled or substantially hardened portion" and "an inner relatively softer figured side". And finally that after treatment on the roller (4a), the sheet is transferred to a leer or annealing chamber (pg 2, line 55). It is well established in the art of glass processing (Kingery, pg 759) that for a typical soda-lime-silica glass,

"In the melting range the viscosity is 50 to 500 P (poise); in the working range the viscosity is higher, being 10^4 to 10^8 P; in the annealing range the viscosity is still higher, being $10^{12.5}$ to $10^{13.5}$ P"

Since the treated sheet of glass (1a') is substantially but not completely hardened, the Danner process is understood in the context of the Kingery disclosure to produce a treated stream traditionally accepted to exist in the "working range". Therefore, the Danner process produces a treated stream (1a') at the end of the treatment presenting a viscosity in the range of about 10^4 P to 10^8 P which reads on the immediate claim of a viscosity in the range of about 10^4 to 10^7P.

Regarding **Claim 12** and in the absence of any exceptional structural details to the contrary, the claimed rollers or wheels (17a and 17b) are held equivalent to the structure set forth in the specification as margin wheels (7) and tractor rollers (8) (specification pg 26, Lines26-29). These rollers are understood to guide the stream of glass in the general direction from "treatment device or mechanism" towards the "device or mechanism". It is further evident from Figure 5 that during this guiding operation "at least said central strip of the second face (s1) of said treated stream of glass continues to be kept free from contact with any surface".

Regarding **Claim 13** and with particular reference to the rejection of Claim 12, in the absence of any exceptional structural detail, the claimed rollers or wheels (17a,18a, 17b, and 18b) are held equivalent to the structure set forth in the specification as margin wheels (7) and tractor rollers (8) (specification pg 26, Lines26-29). Further, from the above figure, said rollers or wheels face each other on opposite sides of the treated stream of glass (1a').

(I) Danner is silent regarding the viscosity of the delivered stream of glass

With respect to the instant Claims, Danner fails to explicitly indicate a preferred viscosity for the stream of glass (1a) when delivered to the process as recited in Claim 1, lines 7-8, namely "a viscosity in the range of about 10 Pa*s to about 1000Pa*s (100 poises to 10, 000 poises)".

(II) Applicants recited viscosity range would have been obvious in view of Simon et al (US 3,537,834)

The patent to Simon et. al is directed to the formation of glass ribbons by the overflow-downdraw-process which one of ordinary skill in the art would appreciate as being closely related to the downdraw process disclosed by Danner. Specifically both Danner and Simon teach a process wherein a single sheet of glass is "fusion formed" by downwardly flowing molten glass over a forming wedge. With respect to the specific viscosity of the molten glass employed during the sheet formation process, Simon teaches "a practical illustration" (see col. 4, lines 63-67) wherein the viscosity of 3500 poises is set forth as a typical operating condition for formation of the glass ribbon. The Simon disclosed glass viscosity of 3500 poises falls directly in the middle of Applicants preferred range of between 100 to 10, 000 poises.

In view of the Simon disclosure, it would appear that use of a glass having a viscosity in the range of 100 to 10,000 poises or between about 10 Pa*s to about 1000Pa*s during the fusion forming of a glass sheet by the downdraw method would be viewed as a merely conventional viscosity to one of ordinary skill in the art. It follows that fusion forming of the glass ribbon using a glass having "a viscosity in the range of about 10 Pa*s to about 1000Pa*s (100 poises to 10, 000 poises)" constitutes no more than application of a known operating condition demonstrated in the Simon reference to the similar glass down-drawn method as disclosed by Danner to yield a predictable result, namely the viable formation of a glass sheet. At the very least, the Simon disclosed operating conditions would present one of ordinary skill a reasonable

expectation for the successful fabrication of a glass sheet for a glass in the stated viscosity range. Thus, it is the Examiners assessment that, in view of the Simon teachings, it would have been obvious for one of ordinary skill in the art to try Applicants recited viscosity range.

Regarding **Claim 2**, Danner teaches that the "treatment device or mechanism (4a)" aligns the treated stream of glass (1a') with and guides the treated stream of glass (1a') towards the device or mechanism for controlling the glass travel speed (7,8).

As evidenced in the figure, said alignment and said guidance are provided while at least the central strip of the second face (s1) of the treated stream of glass (1a') is kept free from contact with any surface. Further, Danner teaches that a gas is emitted from at least the nozzle (17) towards at least the face (s2) of the treated stream of glass. The reference further indicates that the air-blast emanating from this nozzle "serves to effectually press the sheet against the roll *without marring the outer side of the sheet*" (pg 2, column2, lines 75-90).

While Danner is silent regarding the use of a "porous wall" to emit the gas towards the stream of glass, the reference clearly states that the air-blast should be emitted in such a manner as to avoid marring the softened glass material. Absent any unexpected results to the contrary, it would have been obvious to one of ordinary skill in the art at the time of the invention to utilize a porous structure or "a porous wall" in the construction of the nozzle (17). Since such a porous structure would have been well

appreciated in the art as a means of effectively distributing the force of an air blast over the entire softened glass surface, the inclusion of such a "porous" structure would have been an obvious incorporation into the Danner mechanism for anyone seeking to avoid marring of the outside of the glass sheet.

With respect to **Claim 6,** the applicant indicates (pg6, lines 22-27);

"the height through which (the delivered flow of glass) can fall is naturally limited. It must be taken up before it becomes unstable. The acceptable gall height naturally depends on the glass in question. In general it does not exceed 150 millimeters (mm). Advantageously, it is less than 60 mm. *Given a particular glass, the person skilled in the art is perfectly capable of optimizing this fall height*, i.e. of implementing delivery of said glass."

"[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation."; see In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). A particular parameter must first be recognized as a result-effective variable, i.e., a variable which achieves a recognized result, before the determination of the optimum or workable ranges of said variable might be characterized as routine experimentation (See In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980) and In re Antonie, 559 F.2d 618, 195 USPQ 6 (CCPA 1977)). In light of the applicants above disclosure, the fall height is deemed a result-effective variable. Since optimization of this result effective variable would be undertaken through routine experimentation, the immediate claim wherein the

"delivered stream of glass (1a) remains free from any contact with any surface whatsoever over a height that does not exceed 150 mm" is obvious over prior art.

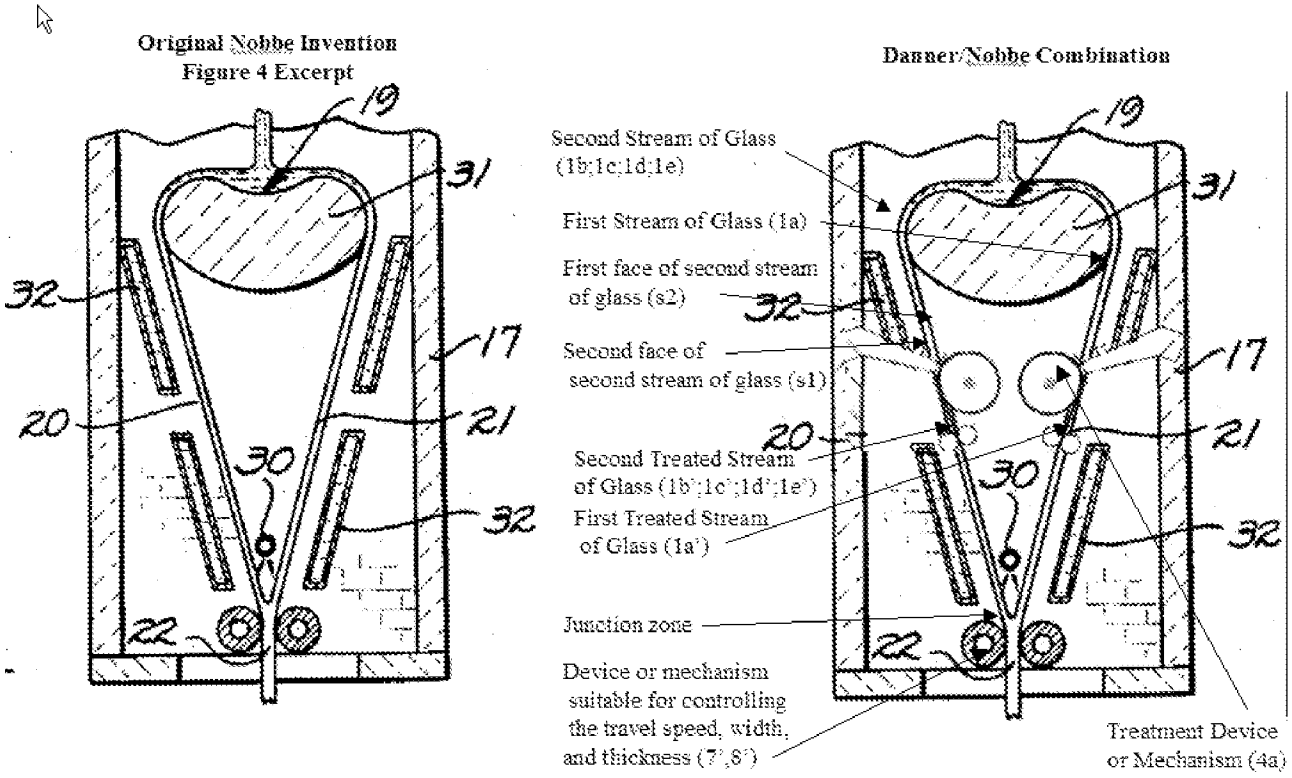
Regarding **Claim 7** and with particular reference to the above rejection of Claim 6, fall height is deemed a result effective variable and therefore a method wherein "said delivered stream of glass (1a) remains free from any contact with any surface with a height less than 60 mm" is obvious over prior art.

Claims 14 through 18, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Danner (1,674,856) and Simon et al (US 3,537,834) in light of Nobbe (1,731,260).

Specifically, Danner teaches all of the elements of Claim 1 as indicated above, however said reference fails to explicitly indicate the introduction of a second stream into the process for treatment and lamination to the first delivered and treated stream. Nobbe broadly teaches of a method for the continuous production of glass sheets from molten glass wherein films of glass flow downward from a molten source while remaining substantially free from contact until being joined or laminated in a junction zone.

The following two figures indicate the invention according to Nobbe Figure 4 and the obvious combination of inventions from Danner in view of Nobbe which will be described below. The combination image has been annotated for reference and clarity

in the context of the presently claimed invention and will be referenced as such. It is further understood that while the combined invention as depicted applies the Danner invention both the first delivered stream of glass and second delivered stream of glass, said teachings could obviously be incorporated individually to either of the two streams and to the exclusion of the other.



Specifically, the above combination teaches:

1. Delivering “a second stream of glass (1b, 1c,1d,1e)” which by virtue of existing in the same process is understood to be compatible with the first stream of Glass (1a) . The second stream of glass (1b, 1c, 1d, 1e) has a first face and second face (s1, s2) as indicated above. Both of first and second faces of both the first delivered stream and second delivered stream are held free from contact with

any surface from their formation in the region of the slab (31) and the treatment device (4a).

2. The second delivered stream of glass (1b, 1c,1d, 1e) is treated by contact with the treatment device or mechanism (4a) in the same manner as outlined for the stream of glass (1a) in the rejection of Claim 1 above.
3. The first and second treated streams of glass are guided towards a junction zone. Said guidance of the first treated stream is provided while ensuring that at least the central strip of the second face of the first treated stream is kept free from contact with any surface in the manner as discussed in the rejection of Claim 1 above.
4. First and second treated and guided streams are joined via the first face of the of the first treated stream of glass that has come into contact upstream with said treatment device or mechanism 4a while the second face of first stream remains relatively free from contact with any surface. Further, device or mechanism (7', 8') is applied to said two joined together streams of glass.

It would be obvious to one of ordinary skill in the art to modify the Nobbe process by the inclusion of the apparatus and process as set forth by Danner. This combination would be obvious to one attempting to form a sheet of glass with an impression in its interior volume while maintaining a high quality unmarred exterior surface.

With respect to Claim 15, Danner indicates that as the sheet passes down and around the roll the sheet takes the impression of the roll (pg 2, Lines 66-73). This disclosure by Danner is understood to encompass a method wherein the treatment of

the second delivered stream of glass (1c) includes rolling or laminating, implemented with or without transferring an imprint" as claimed.

Claim 16 is obvious in light of the rejection of Claim 15 above.

Claim 17 is obvious in light of the arguments set forth in Claim 14 and Claim 1 above, and wherein the joined sheet of glass is cooled by any one of the means well known and commonly practiced in the art.

Claim 18 is obvious in light of the rejection of Claim 17 above

Claim 20 is obvious in light of the objection to Claim 14 above wherein the two sheets of glass are delivered from a single source indicated by (19) in the combined figure

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Danner, Simon, and Nobbe as applied to Claim 14 above, and further in view of Gelstharp (1,934,798). As indicated in Claim 14 above, Danner, Simon, and Nobbe teaches a method comprising

1. Delivering two compatible streams of glass each of which has a first and second face free from contact after formation
2. the first stream treated by placing a first face into contact with a treatment device or mechanism capable of temporarily supporting its weight and accompanying its falling movement while increasing its viscosity and while maintaining at least the central strip of the second face free from contact with any surface

3. Treating a second stream as per the first stream
4. Guiding both of the treated streams of glass towards a junction zone while ensuring that the central strip of the second face of the first treated stream of glass is kept free from any contact and while ensuring that the central strip of the second face of the second treated stream of glass is also not put into contact with any surface
5. Joining the two treated streams of glass together via their respective first faces which have come into contact with the treatment device or mechanism and wherein the second face of the first steam remains relatively free from contact with any surface
6. Acting on the joined together treated streams of glass by a device or mechanism
7. cooling the glass sheet

Danner-Nobbe fails to indicate that the second stream of the two streams should be treated by subjecting the second face of the second stream of glass to an action by another device or mechanism which, co-operating with the treatment device or mechanism serves to transfer an imprint onto said second face. Gelstharp teaches (see figure 17 and 18 below) of a cooperating set of devices which serve to transfer an imprint to one side of a sheet of glass. It would be obvious to incorporate the cooperating devices as taught by Gelstharp in lieu of or in addition to the airblast nozzle (14) in treating the second sheet of glass in order to obtain a patterned surface on the exterior surface of the produced sheet of glass.

Fig. 17.

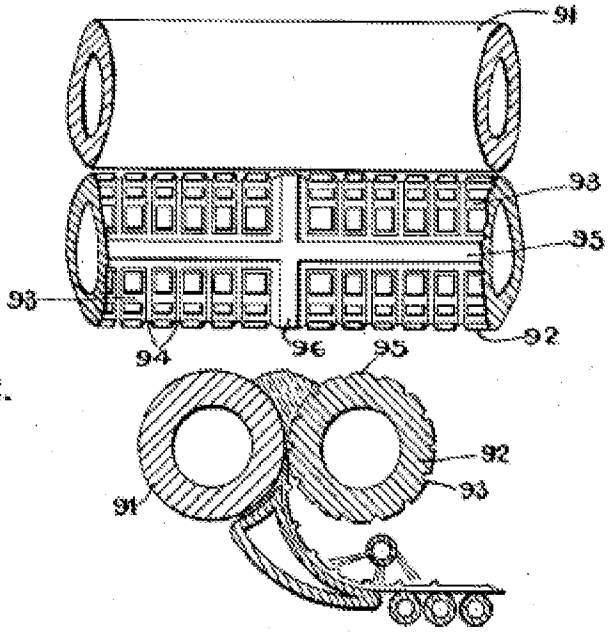


Fig. 18.

Response to Arguments

8. Applicant's arguments filed December 4, 2008 have been fully considered but they are not persuasive.

Argument #1)

9. Applicant alleges (see page 10) that neither Danner nor Anderson teach nor suggest a fusion draw process wherein a device or mechanism is used “to control the speed, and adjust the width and thickness of the treated stream of glass".

10. In response, Applicant is respectfully advised that Claim 1, lines 23-24 recites the limitation wherein the outer edges of the treated glass stream are contacted "with a device or mechanism that controls the speed, and adjusts the width or thickness of the treated stream of glass". The noted deficiencies under 35 U.S.C. 12, first paragraph not

withstanding, the instant claim requires only the that outer edges of the glass sheet are contacted with the device, but the claim in no manner requires that the speed, width, and thickness of the sheet are in fact adjusted by this device. The claim only requires that the device is capable of the noted control over speed, width, and thickness.

11. The fact that the Danner device would be capable of performing the recited function has been previously addressed in the Official Action dated May 20, 2008, pages 19-21, and Applicant has failed to present either conclusive evidence to demonstrate otherwise or to present reasoned rebuttal Examiners conclusions on the matter. It follows that Applicants arguments concerning the recited control over speed, width and thickness of the glass sheet are unpersuasive.

Argument #2)

12. Applicant alleges (see pages 11-12) that "it is impossible to act on the stream of glass in a manner that controls the speed, and adjusts the width or thickness of the stream of glass downstream of the treatment device as taught by Danner.

In response and as noted above, Applicants claims nowhere require that the device actually adjust the speed, width, or thickness of the sheet, only that the device is capable of such an action. Further, to the extent that Applicant alleges that such a control is excluded under the Danner process, Applicant is advised that no evidence has been made of record in support of the instant allegations. Since Applicant has provided no conclusive evidence in support of the instant allegations, it follows that said allegations are held to be mere conjecture and attorney argument.

The Official policy regarding Attorney argument is clearly outlined in MPEP

§2145 [R-3];

> "Attorney argument is not evidence unless it is an admission, in which case, an examiner may use the admission in making a rejection. See MPEP § 2129 and § 2144.03 for a discussion of admissions as prior art. The arguments of counsel cannot take the place of evidence in the record. In re Schulze, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965); In re Geisler, 116 F.3d 1465, 43 USPQ2d 1362 (Fed. Cir. 1997) ("An assertion of what seems to follow from common experience is just attorney argument and not the kind of factual evidence that is required to rebut a prima facie case of obviousness."). See MPEP § 716.01(c) for examples of attorney statements which are not evidence and which must be supported by an appropriate affidavit or declaration.

Argument #3)

13. Applicant's arguments (see pages 11-15) with respect to regarding the viscosity of the glass sheet as recited in claim 1, lines7-8 have been considered but are moot in view of the new ground(s) of rejection in view of Simpson.

Argument #4)

14. Applicant again argues that Danner does not reasonably teach nor suggest a treatment device having a "substantially smooth surface". The issues under 35 U.S.C. §112, first paragraph notwithstanding, Applicants arguments on this matter have been previously addressed at least on page 21 of the Official Action dated October 16, 2007. Specifically, Applicant was advised that "any configuration or impression" (see page 2, lines 63-70) may be employed for the roll surface (4a) and it would appear self-evident

in the instant reference figures 4 and 5 that this surface would reasonably be construed as "substantially smooth". Applicants arguments on this matter are again held to be unpersuasive.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON L. LAZORCIK whose telephone number is (571)272-2217. The examiner can normally be reached on Monday through Friday 8:30 am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on (571) 272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jason L Lazorcik/

Examiner, Art Unit 1791